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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CHARLES R. WOOD,

Plaintiff and Respondent,

v.

CALIFORNIA BUSINESS BANK,

Defendant and Appellant.

B233865

(Los Angeles County
Super. Ct. No. BC445167)

APPEAL from an judgment of the Superior Court of Los Angeles County. Rolf M. Treu, Judge. Affirmed.

Pettit Kohn Ingrassia & Lutz, Thomas S. Ingrassia and Robert J. Hudock for Defendant and Appellant.

Mahoney & Soll, Paul M. Mahoney and Richard A Soll for Plaintiff and Respondent.

Plaintiff Charles Wood filed a complaint for breach of contract against California Business Bank, his former employer, in which he alleged defendant failed to pay him severance benefits due under an employment agreement. Judgment was entered after plaintiff accepted defendant's offer to settle the litigation pursuant to Code of Civil Procedure section 998 (section 998). Defendant appeals from the judgment and an order denying its motion to vacate the judgment, contending plaintiff never accepted its offer, and any settlement was subject to prior approval by the Federal Deposit Insurance Corporation. We affirm.

BACKGROUND

The material facts are undisputed. California Business Bank employed Woods as its president and CEO from 2005 until 2010, when it allegedly breached the employment agreement by wrongfully terminating his employment and failing to pay compensation and other benefits promised to him. On September 9, 2010, Woods filed a lawsuit for breach of contract. On October 29, 2010, defendant offered to settle the litigation pursuant to section 998 for \$50,001 plus reasonable attorney fees and costs.

The section 998 offer provided in full: "Please take notice that Defendant California Business Bank ('Defendant') hereby offers to settle all claims that Plaintiff Charles R. Wood ('Plaintiff') has, or may have, against Defendant, including those contemplated in the above-captioned action, pursuant to California Code of Civil Procedure section 998, for the total sum of \$50,001, plus (in addition to) an award of reasonable attorney fees and costs to be determined by the court. [¶] This offer to compromise does not constitute an admission of liability by or on behalf of Defendant; all liability is expressly denied. Furthermore, this offer is subject to Plaintiff's execution of an agreement releasing all claims against Defendant, such agreement must include a waiver of California Civil Code section 1542, and Plaintiff's dismissal of his complaint against Defendant with prejudice. [¶] If this offer is accepted, Plaintiff must file this offer and a notice of acceptance with the court within 35 days of the date upon which this offer is mail served, or prior to commencement of trial, whichever occurs first. If this

offer is not accepted within 35 days, or prior to the commencement of trial, whichever occurs first, it shall be deemed rejected and withdrawn.” (All caps typeface omitted.)

On November 29, 2010, plaintiff filed an acceptance of the offer to compromise with the Los Angeles Superior Court. The acceptance provided in pertinent part: “Notice is hereby given that pursuant to [section 998], Plaintiff Charles R. Wood accepts the offer made by Defendant California Business Bank to have judgment taken against Defendant California Business Bank and in favor of plaintiff Charles R. Wood in the above-entitled action in accordance with all of the terms and conditions set forth in the attached offer to compromise.” (All caps typeface omitted.)

California Business Bank objected to plaintiff’s acceptance on the ground that it did not conform with the offer, specifically in that defendant did not agree to have judgment entered against it, but instead explicitly required that plaintiff dismiss his lawsuit with prejudice.

On February 7, 2011, plaintiff moved for entry of judgment pursuant to section 998. He contended that although he accepted defendant’s section 998 offer, defendant failed to perform under the resulting compromise. Attached to plaintiff’s motion was a proposed judgment that provided in full as follows: “It is hereby ordered, adjudged and decreed that Plaintiff Charles R. Wood shall recover from Defendant California Business Bank the sum of \$50,001 in addition to reasonable attorneys’ fees and costs to be determined by the court. [¶] It is further ordered[ed], adjudged and decreed that upon receipt of \$50,001 plus reasonable attorneys’ fees and costs determined by the court, Plaintiff Charles R. Wood shall file a dismissal of his complaint against Defendant California Business Bank with prejudice.” (All caps typeface omitted.) Also attached was a request for dismissal on a Judicial Council form and a proposed agreement by which plaintiff released all claims against defendant.

Defendant opposed the motion. It contended that by varying the terms of the section 998 offer by seeking entry of judgment against defendant rather than dismissal without prejudice, Wood in effect rejected the settlement offer. Because the section 998 offer had been rejected, no ground existed on which to enter judgment. Furthermore,

judgment could not be entered because the \$50,001 payment had not been approved by the Federal Deposit Insurance Corporation (FDIC). Such approval was required by the federal banking law, which prohibits distressed banks from making severance payments to bank officers without FDIC approval.

The trial court rejected defendant's arguments, finding that FDIC approval of the settlement was unnecessary and that plaintiff, by seeking judgment "in accordance with all the terms and conditions set forth in the attached offer to compromise," accepted defendant's section 998 offer in all respects. The court signed plaintiff's proposed judgment with the following addition: "When the dismissal is entered, the judgment will be deemed vacated." Judgment was entered, and the trial court ultimately awarded plaintiff \$17,000 in attorney fees.

Defendant's motion to vacate the judgment was summarily denied.

Defendant timely appealed from the judgment and the order denying its motion to vacate the judgment.

DISCUSSION

California Business Bank contends the trial court had no power to enter a judgment because (1) the section 998 offer was never accepted by plaintiff and (2) the settlement required FDIC approval.

A. Plaintiff Accepted Defendant's Offer

Section 998 provides that any party to an action "may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time." (§ 998, subd. (b).) If a party accepts the offer, "the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly." (§ 998, subd. (b)(1).)

"A judgment entered pursuant to the acceptance of a section 998 offer is 'a stipulated or consent judgment' that is regarded as a contract between the parties and 'must be construed as any other contract.' [Citations.] Section 998 permits the parties to determine the nature of the judgment to be entered and to resolve collateral matters, including costs. The parties may agree that judgment will be entered in favor of plaintiff

[citation] or that the action will be dismissed voluntarily [citation].” (*Chinn v. KMR Property Management* (2008) 166 Cal.App.4th 175, 184 (*Chinn*).)

“When a written stipulation sets forth all the terms of a judgment agreed to by the parties, the filing of the stipulation normally provides a sufficient basis for entry of the judgment upon the ex parte application of either party. [Citation.] But if the stipulation *omits* any essential element of a complete judgment, a judgment cannot be entered until the missing element or elements are established by proof or by further stipulation. [Citation.] Similarly, if a material term of the stipulation is ambiguous, judgment cannot be entered until such ambiguity is appropriately resolved.” (*Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, 368-369.) The court has no power to resolve disputes concerning the terms of the settlement. (See *Saba v. Crater* (1998) 62 Cal.App.4th 150, 153.)

Entry of judgment or dismissal pursuant to a section 998 compromise is a ministerial task that may be performed by the clerk of the court. (*Saba v. Crater, supra*, 62 Cal.App.4th at p. 153.)

In the absence of any conflicting extrinsic evidence, interpretation of a 998 offer is a question of law that we review de novo. (*Chinn, supra*, 166 Cal.App.4th at p. 183.) “We apply general principles of contract law where those principles neither conflict with section 998 nor defeat its purpose.” (*Ibid.*) We construe ambiguities in a 998 offer against the offeror. (*Id.* at p. 185; see also *Berg v. Darden* (2004) 120 Cal.App.4th 721, 727 [“a section 998 offer is construed strictly in favor of the party sought to be subjected to its operation”].)

Defendant’s section 998 offer provided that defendant would pay plaintiff \$50,001 plus reasonable attorney fees in exchange for plaintiff’s execution of a release and dismissal of his complaint. In the letter of acceptance filed by plaintiff in the superior court, plaintiff characterized the offer as requiring that judgment be taken against defendant and in favor of plaintiff “in accordance with all of the terms and conditions set forth in the” offer. Defendant argues plaintiff’s letter did not constitute proof of

acceptance because it changed the terms of the offer, which did not contemplate that judgment would be entered against defendant. The argument is without merit.

Although in his acceptance plaintiff stated a judgment would be taken against defendant, this characterization of the disposition had no legal effect, i.e., it did not change the terms of the offer, because plaintiff also stated judgment was to be taken “in accordance with all of the terms and conditions set forth in the attached offer to compromise.” To the extent plaintiff misstated the way in which the lawsuit would be terminated, defendant invited the misstatement, which in any event was immaterial. Defendant expressly made its offer “pursuant to California Code of Civil Procedure section 998,” which provides that “[i]f the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly.” (§ 998, subd. (b)(1).) Plaintiff followed the procedure set forth in section 998 by filing his letter of acceptance with the court and seeking that “judgment” be entered. He also preserved the substance of the offer by asking that judgment be entered in accordance with the terms and conditions set forth in the offer.

Any deviation from the offer was immaterial, as plaintiff’s proposed judgment was phrased in neutral language—stating only that defendant would pay \$50,001—and called for dismissal of the action, which defendant also sought, and the final judgment stated the judgment itself would be vacated once dismissal was entered. The judgment was neutral and temporary, and in no way disfavors or prejudices defendant. If defendant wanted no public record of its payment to settle the lawsuit it need not have made its offer subject to section 998.

We conclude plaintiff accepted defendant’s section 998 offer without material modification and filed proof of acceptance with the trial court. The court entered judgment accordingly, as it was required to do under section 998.

B. The Settlement Agreement Was Not Invalid

Defendant contends the settlement agreement was invalid because it violated federal laws that prohibit banks from making severance payments to officers without FDIC approval. The argument is without merit.

The FDIC is a federal agency that insures bank deposits. (12 U.S.C. § 1811.) Congress has granted the FDIC power to regulate or prohibit certain forms of benefits given by banks to employees. (12 U.S.C. § 1828(k).) As pertinent here, the FDIC “may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.” (12 U.S.C. § 1828(k)(1); see 12 C.F.R. 359.2 (2012) [no insured bank may agree to make any golden parachute payment except under certain circumstances].) A golden parachute payment is “any payment (or any agreement to make any payment) *in the nature of compensation* . . . [to an] affiliated party pursuant to an obligation . . . that—[¶] (i) *is contingent on the termination of such party’s affiliation with the institution or covered company*” (12 U.S.C. § 1828(k)(4)(A), italics added; 12 C.F.R. 359.1(f) (2012).) In banking law, the term “compensation” means payment for services. (See Schooner, *Refocusing Regulatory Limitations on Banks’ Compensation Practices* (1996) 37 B.C. L.Rev 861.)

Nothing in this record suggests the \$50,001 offered by defendant constituted payment for services or was contingent on the termination of plaintiff’s employment. Plaintiff’s employment was terminated in August 2010, two months before defendant made the \$50,001 offer. The offer was made in exchange for dismissal of a lawsuit, not as payment for services. It did not constitute a golden parachute payment, and FDIC approval was not required.

Defendant cites no authority to the contrary, and we have discovered none. The two unpublished federal trial court cases upon which defendant relies for the proposition that FDIC approval is required, *Hill v. Commerce Bancorp, Inc.* (D.N.J. 2010) 2010 U.S. Dist. LEXIS 59988 and *In re Netbank, Inc.* (U.S.B.C., M.D. Fla. 2010) 2010 Bankr. LEXIS 4462, are easily distinguishable, as each involved a demand for severance pay, not an agreement to settle a lawsuit.

The settlement was not prohibited by federal law.

DISPOSITION

The judgment is affirmed. Respondent is to recover his costs on appeal.
NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.